

**Letter of Findings: 42-20181672
International Fuel Tax Agreement
For The Tax Year 2015**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Business was not able to meet the burden of proving the proposed IFTA assessment wrong. Therefore, the assessment remains as issued.

ISSUE

I. IFTA–Assessment.

Authority: IC § 6-8.1-5-4; IC § 6-6-4.1-14; IC § 6-8.1-5-1; *Indiana Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289 (Ind. Tax Ct. 2007); IFTA Articles of Agreement § R700; IFTA Articles of Agreement § R1210; IFTA Articles of Agreement § R1230; IFTA Procedures Manual § P510; IFTA Procedures Manual § P530; IFTA Procedures Manual § P540.

Taxpayer protests the Department's proposed assessment.

STATEMENT OF FACTS

Taxpayer is an Indiana business engaged in trucking. As the result of an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer had underreported the amount owed under the International Fuel Tax Agreement ("IFTA") for the year 2015. The Department therefore issued proposed assessments for IFTA tax and interest. Taxpayer protested the imposition of additional IFTA tax. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. IFTA–Assessment.

DISCUSSION

Taxpayer protests the imposition of additional IFTA taxes for the tax year 2015. The Department based its determination that additional IFTA taxes were due on the fact that Taxpayer did not have beginning and ending odometer readings available for review and verification of the IFTA returns already submitted by Taxpayer for that year. Also, the Department noted that Taxpayer's reports did not include longitudinal and latitudinal information. The Department therefore considered Taxpayer's records incomplete and used revised distance and mileage figures as provided under IFTA. Those calculations resulted the Department determining that Taxpayer used and purchased more gallons of fuel than reported and that additional IFTA taxes were due. Taxpayer protests that it based its returns on global positioning system ("GPS") readings and that the returns it filed were therefore reliable and accurate, even if the GPS readings did not include beginning and ending odometer readings.

As a threshold issue, it is the Taxpayers' responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 897 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept.*

of *State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

The Department first refers to IC § 6-6-4.1-14, which states:

- (a) The commissioner or, with the commissioner's approval, the reciprocity commission created by [IC 9-28-4](#) may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements with the appropriate official or officials from any other state or jurisdiction under which all or any part of the requirements of the Indiana Administrative Code are waived with respect to motor carriers that use in Indiana motor fuel upon which tax has been paid to the other state or jurisdiction. An agreement may be made under this subsection only with a state or jurisdiction that grants equivalent privileges with respect to motor fuel consumed in the other state or jurisdiction and on which a tax has been paid to this state.
- (b) The commissioner or, with the commissioner's approval, the reciprocity commission created by [IC 9-28-4](#) may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal agreements with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter, including the requirements for trip permits, temporary authorizations, repair and maintenance permits, and annual permits and the payment of fees for permits and authorizations. An agreement may be made under this subsection only with a state or jurisdiction that grants equivalent exemptions to motor vehicles licensed in Indiana.

Next, IC § 6-8.1-5-4 states:

- (a) Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.
- (b) A person must retain the books and records described in subsection (a), and any state or federal tax return that the person has filed:
- (1) for an unlimited period, if the person fails to file a return or receives notice from the department that the person has filed a suspected fraudulent return, or an unsigned or substantially blank return; or
 - (2) in all other cases, for a period of at least three (3) years after the date the final payment of the particular tax liability was due, unless after an audit, the department consents to earlier destruction.
- In addition, if the limitation on assessments provided in section 2 of this chapter is extended beyond three (3) years for a particular tax liability, the person must retain the books and records until the assessment period is over.
- (c) A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times.
- (d) A person must, on request by the department, furnish a copy of any federal returns that he has filed.

Next, the Department refers to IFTA Articles of Agreement § R700, which provides:

Every licensee shall maintain records to substantiate information reported on the tax returns. *Operational records shall be maintained or be made available for audit in the base jurisdiction.* Recordkeeping requirements shall be specified in the IFTA Procedures Manual. *(Emphasis added).*

Next, IFTA Articles of Agreement § R1210 states:

- .100 In the event that any licensee
- .005 fails, neglects, or refuses to file a tax return when due;
- .010 *fails to make records available upon written request by the base jurisdiction;* or
- .015 fails to maintain records from which the licensee's true liability may be determined, *the base jurisdiction shall proceed in accordance with .200 and .300.*
- .200 *On the basis of the best information available to it, the base jurisdiction shall:*
- .005 *determine the tax liability of the licensee for each jurisdiction and/or*
- .010 *revoke or suspend the license of any licensee who fails, neglects or refuses to file a tax report with full payment of tax when due, in accordance with the base jurisdiction's laws.*
- Both .200.005 and .200.010 may be utilized by the base jurisdiction. For purposes of assessment pursuant to .100.010 or .100.015, the base jurisdiction must issue a written request for records giving the licensee thirty

(30) days to provide the records or to issue a notice of insufficient records.

.300 The base jurisdiction shall, after adding the appropriate penalties and interest, serve an assessment issued pursuant to .200.005 upon the licensee in the same manner as an audit assessment or in accordance with the laws of the base jurisdiction. *The assessment made by a base jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case where the validity of the assessment is questioned, the burden shall be on the licensee to establish by a fair preponderance of evidence that the assessment is erroneous or excessive.*
(Emphasis added).

Next, IFTA Articles of Agreement § R1230 provides:

The base jurisdiction, for itself and on behalf of the other jurisdictions, shall assess interest on all delinquent taxes due each jurisdiction except taxes collected directly by other jurisdictions in accordance with IFTA Procedures Manual Sections P1000 and P1120.300.

Also, IFTA Procedures Manual § P510 states:

A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments.

A licensee must preserve all fuel and distance records for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction.

On request, the licensee shall make such records available for audit to any member jurisdiction.

If the licensee's records are not maintained in the base jurisdiction and the base jurisdiction's auditors travel to the location where records are maintained, the base jurisdiction may require the licensee to pay the base jurisdiction's reasonable per diem and travel expenses incurred by the auditor or auditors in performance of an audit.

Following the expiration of the time within which an appeal or request for re-audit or reexamination may be filed under R1360 and R1390, and except in cases of fraud, the findings of an audit, re-audit, or reexamination shall be final as to all member jurisdictions and as to the licensee audited.

Unless a waiver of the statute of limitations is granted by the licensee, no assessment for deficiency or any refund shall be made for any period for which the licensee is not required to retain records. A licensee's request for refund shall extend the period for which records pertaining to the refund must be retained until the request is granted or denied.
(Emphasis added).

IFTA Procedures Manual § P530 states:

The records maintained by a licensee under this article shall be adequate to enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet.

The adequacy of a licensee's records is to be ascertained by the records' sufficiency and appropriateness. Sufficiency is a measure of the quantity of records produced; that is, whether there are enough records to substantially document the operations of the licensee's fleet. *The appropriateness of the records is a measure of their quality; that is, whether the records contain the kind of information an auditor needs to audit the licensee for the purposes stated in the preceding paragraph. Records that are sufficient and appropriate are to be deemed adequate.*

Provided a licensee's records are adequate under this definition, the records may be produced through any means, and retained in any format or medium available to the licensee and accessible by the base jurisdiction. If records are presented in a format or in a manner in which the base jurisdiction cannot audit them, they have not been made available as required.

Licensee records which do not contain all of the elements set out in P540, P550 and P560 may still,

*depending on the sufficiency and appropriateness of the records and of the licensee's operations, be adequate for an audit.
(Emphasis added).*

Next, IFTA Procedures Manual § P540 states:

.100 Distance records produced by a means other than a vehicle-tracking system that substantially document the fleet's operations and contain the following elements shall be accepted by the base jurisdiction as adequate under this article:

.005 the beginning and ending dates of the trip to which the records pertain

.010 the origin and destination of the trip

.015 the route of travel

.020 the beginning and ending reading from the odometer, hubodometer, engine control module (ECM), or any similar device for the trip

.025 the total distance of the trip

.030 the distance traveled in each jurisdiction during the trip

.035 the vehicle identification number or vehicle unit number

.200 Distance records produced wholly or partly by a vehicle-tracking system, including a system based on a global positioning system (GPS):

.005 the original GPS or other location data for the vehicle to which the records pertain

.010 the date and time of each GPS or other system reading, at intervals sufficient to validate the total distance traveled in each jurisdiction

.015 the location of each GPS or other system reading

.020 the beginning and ending reading from the odometer, hubodometer, engine control module (ECM), or any similar device for the period to which the records pertain

.025 the calculated distance between each GPS or other system reading

.030 the route of the vehicle's travel

.035 the total distance traveled by the vehicle

.040 the distance traveled in each jurisdiction

.045 the vehicle identification number or vehicle unit number

.300 A licensee's reporting of distance may deviate slightly from a calendar quarter basis provided that:

.005 the beginning and ending dates of the licensee's reported distance reflects a consistent cut-off procedure,

.010 the deviations do not materially affect the reporting of the licensee's operations,

.015 the deviations do not materially delay the payment of taxes due,

.020 the cut-off dates for both distance and fuel are the same, and

.025 the base jurisdiction can reconcile the reported distance for the period through audit.

(Emphasis added).

Taxpayer protests that the GPS system it used did list miles travelled and that this is sufficient to calculate mileage as provided by IFTA Procedures Manual § P530. Taxpayer states that it is unjust and unfair for the Department to recalculate mileage and increase its IFTA liabilities.

After review of the total sheets and documents regarding the fuel purchased and mileage reported during the audit period, the Department cannot agree with Taxpayer's position. IFTA Procedures Manual § P540.220 specifically states that distance records produced wholly or partly by a vehicle-tracking system, including a system based on GPS must include the beginning and ending reading from the odometer, hubodometer, engine control module (ECM), or any similar device for the period to which the records pertain. Taxpayer's GPS reports did not include such information.

As required by IFTA Procedures Manual § P530, the records maintained by a licensee shall be adequate to enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet. Without beginning and ending odometer readings and without longitudinal and latitudinal information for starting and ending points for the trips, the Department does not consider the remaining information verified or verifiable. The Department's adjustments were therefore appropriate. Taxpayer has not met the burden imposed by IFTA R1210.300 and by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

December 27, 2018

Posted: 02/27/2019 by Legislative Services Agency
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